

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of)	
)	
Channel Lineup Requirements – Sections)	MB Docket No. 18-92
76.1605 and 76.1700(a)(4))	
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

**REPLY COMMENTS OF THE CITY OF BOSTON, MASSACHUSETTS
OFFICE OF BROADBAND AND CABLE**

I. SUMMARY

Boston urges the Commission to clarify that cable operators are required to maintain complete, historical records of their channel lineups in their online public files, and to present to consumers their full channel lineups and programming information, including PEG-related information, to ensure that consumers, regulators, and the Commission itself have the information they need to play their respective roles in the video marketplace.

II. INTRODUCTION

The City of Boston Office of Broadband and Cable (“Boston”) submits these Reply Comments in response to the record developed thus far in the above-captioned proceedings. Mayor Martin J. Walsh’s Office of Broadband and Cable¹ which is part of the City of Boston’s

¹ The Mayor’s Office of Broadband and Cable (simply “Cable Communications”) was established in July of 1980 and given the task of researching and planning the development of Boston’s cable television and communication system. The Office of Cable Communications was

Department of Innovation and Technology, compiled these Reply Comments to join other commenters in underscoring the importance of including detailed, historical channel lineups in cable operators' online public files. While Boston supports reasonable efforts to modernize regulations, modernization should not be a synonym for elimination. These efforts must not, for example, deprive state and local franchising authorities of the information they need to carry out functions entrusted to them by Congress and the Federal Communications Commission ("Commission"). And the Commission must not force consumers and franchising authorities to rely solely on promotional materials and program guides from which cable operators routinely withhold vital channel and programming information.

III. THE AVAILABILITY OF COMPLETE, ACCURATE, AND HISTORICAL CHANNEL LINEUPS ARE ESSENTIAL TO ENSURING COMPLIANCE WITH COMMISSION REGULATIONS.

The Commission's regulations include "baseline customer service standards" upon which consumers and franchising authorities rely to ensure cable operators "provide an adequate level of customer service to cable subscribers."² In establishing that framework, the Commission "conclude[d] that the customer service standards we adopt today should be enforced by local franchise authorities."³ Among these are requirements that cable operators provide notice to

the sole office within the City government delegated with the responsibility of managing the cable franchising process in Boston; and as such, the office served an important policy-making function as the principle advisor to the Mayor on the cable franchise issues. Under Massachusetts law, the Mayor of Boston has the exclusive authority to award the cable franchise license. Presently the Office of Cable and Broadband enforces contractual and regulatory obligations for cable operators, produces government and education access television, and advocates for customers in disputes with cable operators. The Office is also expanding the City's fiber network and supporting efforts to bridge the digital divide.

² *In the Matter of Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd. 2892, 2895 (1993) ("1993 Customer Service Order").

³ *Id.* at 2898.

subscribers of particular actions, including “any changes in rates, programming services or channel positions.”⁴

It is essential that franchising authorities like Boston, who are charged by the Commission with enforcing these standards, have access to the information necessary perform those functions. Regulators cannot evaluate whether a cable operator has given the required notice prior to adding, removing, or rearranging channels, if the only source of channel lineup information is the providers’ own promotional website. The Alliance for Community Media (“ACM”) comments describe in detail the significant omissions, inconsistencies, and other issues present in cable operators’ promotional lineups.⁵ If, as the Commission appears to contemplate, the only source of channel lineup information is the providers’ own promotional websites, it is evident that enforcement of these Commission rules will be impossible, as those website already fail to provide complete channel lineups, let alone the historical information that is necessary.

Boston agrees with the National Association of Telecommunications Officers and Advisers (“NATOA”) that “[r]etaining a reasonable history of channel lineups in the online public file provides a simple and transparent mechanism to verify compliance with these requirements.”⁶ Boston echoes the proposals of ACM and NATOA that the Commission “clarify that cable operators must retain in those [public] files histories of their channel lineups over a reasonable period of time.”⁷ The absence of such records renders “the existing notice

⁴ 47 C.F.R. § 76.1603(b).

⁵ ACM Comments at 2-3.

⁶ NATOA Comments at 3.

⁷ *Id.*; *see also* ACM Comments at 3.

requirements[], at best, more difficult to enforce and, at worst, virtually meaningless for lack of enforceability.”⁸

The costs of this requirement should be vanishingly small to providers, as well. As NATOA notes, if cable operators are preparing the notifications required by existing law and their franchises, and are providing the currently-required channel lineups in their public files, additional costs from retaining historical copies should be minimal.⁹ The benefit of retaining and clarifying this requirement, in contrast, is the value derived from the Commission’s customer service standards themselves, as without this data they are all but impossible to enforce.

IV. CABLE OPERATORS ALREADY FAIL TO PROVIDE COMPLETE PROGRAMMING INFORMATION IN THEIR PROMOTIONAL MATERIALS AND ELECTRONIC PROGRAM GUIDES, DEPRIVING CONSUMERS AND FRANCHISING AUTHORITIES OF ESSENTIAL INFORMATION.

In its Notice of Proposed Rulemaking, the Commission repeatedly refers to “the websites of the operator” and “on-electronic program guides” allegedly providing adequate programming information.¹⁰ As ACM demonstrates, however, cable operators commonly exclude relevant programming information, particularly that pertaining to public, educational, and governmental (“PEG”) channels and programming, from their online promotional materials.¹¹ It is also common for providers to refuse to include such information in electronic program guides within the cable system. Boston and other communities have encountered substantial opposition from cable operators when seeking inclusion of PEG program information in program guides.

⁸ NATOA Comments at 3.

⁹ *Id.* at 4.

¹⁰ *In the Matter of Channel Lineup Requirements - 76.1605 and 76.1700(a)(4)*, MB Docket No. 18-92, *Notice of Proposed Rulemaking*, FCC 18-47, ¶¶ 3, 6 (rel. Apr. 17, 2018).

¹¹ ACM Comments at 2-3 (describing Comcast’s omission of PEG program information and Verizon’s omission of all PEG channels from online promotional materials.)

These experiences contrast sharply with NCTA's assertion that websites and interactive guides give consumers "more relevant, accurate, and up-to-date information" than any regulation might require.¹² Despite claimed "strong economic incentives" to make information available to consumers,¹³ some of the nation's largest cable operators consistently refuse to provide complete information.¹⁴ As ACM notes, "[r]egardless of the motivation, this example provides clear illustration why promotional websites should not be used as the sole evidence of the business practices of cable operators or information reporting for regulators."¹⁵ Based on its experience dealing with these and other cable operators, Boston strongly supports ACM's conclusion.

In addition to requiring providers to include complete and reasonably historical channel guide information in their public files, the Commission should further clarify that to the extent providers represent their channel lineups to consumers in online promotional materials and electronic programming guides, those providers must include information about all available channels, and include all programming information on an equal basis. The status quo in this area deprives consumers of essential information.

V. CONCLUSION

Boston takes its responsibility as franchising authority seriously, and is committed to carrying out the enforcement of Commission rules, as envisioned by the agency and Congress. Boston cannot do its part, however, if the Commission deprives consumers and regulators of information necessary to those functions. Accordingly, Boston strongly urges the Commission to clarify that cable operators are required to maintain complete, historical records of their channel

¹² NCTA Comments at 3.

¹³ *Id.* at 3-4.

¹⁴ ACM Comments at 2-3.

¹⁵ *Id.* at 3.

lineups in their online public files, and to present to consumers their full channel lineups and programming information, including PEG-related information, to ensure that consumers, regulators, and the Commission itself have the information they need to play their parts in the video marketplace.

Respectfully Submitted,

/s/ Gerard Lavery Lederer

Gerard Lavery Lederer

John Gasparini

BEST BEST & KRIEGER, LLP

2000 Pennsylvania Ave N.W., Suite 5300

Washington, D.C. 20006

June 15, 2018